

Regular Session, 2009

HOUSE BILL NO. 432

BY REPRESENTATIVE BURFORD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH CARE/PROVIDERS: Provides relative to criminal history checks on nonlicensed persons and licensed ambulance personnel

1 AN ACT

2 To amend and reenact R.S. 40:1300.51(3), 1300.52(D)(1), and 1300.53(C)(1) and to enact
3 R.S. 40:1300.51(2)(n), relative to criminal history checks on nonlicensed persons and
4 licensed ambulance personnel; to amend the definition of employer to include
5 pediatric day health care facilities; to make all crimes reportable in background
6 checks; to amend the provisions for waiver; to provide that certain convictions
7 cannot be waived by an employer; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1300.51(3), 1300.52(D)(1), and 1300.53(C)(1) are hereby
10 amended and reenacted and R.S. 40:1300.51(2)(n) is hereby enacted to read as follows:

11 §1300.51. Definitions

12 For the purposes of this Part:

13 * * *

14 (2) "Employer" means any of the following facilities, agencies, providers,
15 or programs:

16 * * *

17 (n) A pediatric day health care facility, as defined in R.S. 40:2193.1(B)(5).

18 (3) "Nonlicensed person" means any person who provides for compensation
19 nursing care or other health-related services to residents in a nursing facility,
20 intermediate care facility for people with developmental disabilities, adult residential

1 care facility, pediatric day health care facility, or home- and community-based
2 service provider and who is not a licensed health provider. "Nonlicensed person"
3 also means any person who provides such services to individuals in their own homes
4 as an employee or contract provider of a home health agency, hospice, or home- and
5 community-based service provider. "Nonlicensed person" also means any person
6 employed as a driver by or who contracts as a driver with a nonemergency, non-
7 ambulance transportation facility or entity.

8 * * *

9 §1300.52. Employment of nonlicensed persons and licensed ambulance personnel;
10 mandatory criminal history and security checks; temporary employment;
11 notice to applicants

12 * * *

13 D.(1) The office or authorized agency shall ~~not~~ provide to the employer ~~the~~
14 ~~criminal history records of a person being investigated unless the records relate to:~~
15 only such information as is necessary to specify whether or not that person has been
16 arrested for or convicted of or pled nolo contendere to any crime or crimes, the crime
17 or crimes for which he has been arrested or convicted or to which he has pled nolo
18 contendere, and the date or dates on which the crime or crimes occurred.

19 ~~(a) Any crime of violence as enumerated in R.S. 14:2(B) and those crimes~~
20 ~~defined in R.S. 14:34.7, R.S. 14:35, R.S. 14:36, R.S. 14:37.1, R.S. 14:37.4, R.S.~~
21 ~~14:38, R.S. 14:41, R.S. 14:43.3, R.S. 14:43.5, R.S. 14:44.2, R.S. 14:52 through R.S.~~
22 ~~14:54.4, R.S. 14:55, R.S. 14:57, R.S. 14:60 through R.S. 14:62.3, R.S. 14:64.3, R.S.~~
23 ~~14:64.4, R.S. 14:67, R.S. 14:67.1 through R.S. 14:67.16, R.S. 14:67.20 through R.S.~~
24 ~~14:67.22, R.S. 14:69 through 14:70.2, R.S. 14:70.4 and 14:70.5, R.S. 14:71.1, R.S.~~
25 ~~14:74, R.S. 14:78, R.S. 14:79.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S.~~
26 ~~14:91.13, R.S. 14:92, R.S. 14:93, R.S. 14:93.2.1, R.S. 14:93.3 through R.S. 14:93.5,~~
27 ~~R.S. 14:101.1, R.S. 14:102.1, R.S. 14:106, R.S. 14:107.2, R.S. 14:128.1 and R.S.~~
28 ~~14:128.2, R.S. 14:282, R.S. 14:286, and distribution or possession with the intent to~~

1 ~~distribute controlled dangerous substances as listed in Schedules I through V of the~~
2 ~~Uniform Controlled Dangerous Substances Act.~~

3 ~~(b) An attempt or conspiracy to commit any of the offenses listed in~~
4 ~~Subparagraph (1)(a) of this Subsection.~~

5 * * *

6 §1300.53. Refusal to hire or contract; termination of employment; exemption;
7 appeal procedure; waiver

8 * * *

9 C.(1) The employer may waive the provisions of this Part-, unless the
10 licensed ambulance personnel or nonlicensed person has been convicted of any crime
11 as enumerated by R.S. 14:31, R.S. 14:34, R.S. 14:34.7, R.S. 14:35.2, R.S. 14:37, R.S.
12 14:37.1, R.S. 14:37.4, R.S. 14:42.1, R.S. 14:43.1, R.S. 14:44.2, R.S. 14:64, R.S.
13 14:80, R.S. 14:81.2, R.S. 14:93, R.S. 14:93.3, R.S. 14:93.4, or R.S. 14:93.5. If the
14 licensed ambulance personnel or nonlicensed person has been convicted of any
15 crime as enumerated by R.S. 14:31, R.S. 14:34, R.S. 14:34.7, R.S. 14:35.2, R.S.
16 14:37, R.S. 14:37.1, R.S. 14:37.4, R.S. 14:42.1, R.S. 14:43.1, R.S. 14:44.2, R.S.
17 14:64, R.S. 14:80, R.S. 14:81.2, R.S. 14:93, R.S. 14:93.3, R.S. 14:93.4, or R.S.
18 14:93.5, then the employer shall not hire or contract with such person and shall not
19 grant a waiver to such person.

20 * * *

21 Section 2. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Burford

HB No. 432

Abstract: Provides relative to criminal history checks on nonlicensed persons and licensed ambulance personnel.

Present law defines the term employer to include certain types of health care providers.

Proposed law amends the definition of employer to include pediatric day health care facilities.

Present law provides for the types of reportable crimes for mandatory criminal history checks on nonlicensed persons and licensed ambulance personnel.

Proposed law expands background checks to include all crimes arrested for, convicted of, or pled nolo contendere to and the dates when such crimes were committed.

Present law allows an employer to waive criminal history checks or any of the provisions of R.S. 40:1300.51 to 1300.56, relative to such checks on nonlicensed persons and licensed ambulance personnel.

Proposed law eliminates an employer's discretion with respect to the following crimes: manslaughter (R.S. 14:31), aggravated battery (R.S. 14:34), aggravated second degree battery (R.S. 14:34.7), simple battery of the infirm (R.S. 14:35.2), aggravated assault (R.S. 14:37), assault by drive-by shooting (R.S. 14:37.1), aggravated assault with a firearm (R.S. 14:37.4), forcible rape (R.S. 14:42.1), sexual battery (R.S. 14:43.1), aggravated kidnapping of a child (R.S. 14:44.2), armed robbery (R.S. 14:64), felony carnal knowledge of a juvenile (R.S. 14:80), molestation of a juvenile (R.S. 14:81.2), cruelty to juveniles (R.S. 14:93), cruelty to the infirmed (R.S. 14:93.3), exploitation of the infirmed (R.S. 14:93.4), and sexual battery of the infirmed (R.S. 14:93.5). Further provides that the employee shall not hire or contract with such a person convicted of such an enumerated crime.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 40:1300.51(3), 1300.52(D)(1), and 1300.53(C)(1); Adds 40:1300.51(2)(n))